

## 12.504

Executive agency contracts for the acquisition of commercial items:

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see 3.503).

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see 15.403).

(3) 41 U.S.C. 422, Cost Accounting Standards (see 48 CFR chapter 99) (see 12.214).

[60 FR 48241, Sept. 18, 1995]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting 12.503, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### **12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.**

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components at any tier:

(1) 10 U.S.C. 2631, Transportation of Supplies by Sea (except for the types of subcontracts listed at 47.504(d)).

(2) 15 U.S.C. 644(d), Requirements relative to labor surplus areas under the Small Business Act (see subpart 19.2).

(3) [Reserved]

(4) 41 U.S.C. 43, Walsh-Healey Act (see subpart 22.6).

(5) 41 U.S.C. 253d, Validation of Proprietary Data Restrictions (see subpart 27.4).

(6) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see subpart 3.4).

(7) 41 U.S.C. 254d(c) and 10 U.S.C. 2313(c), Examination of Records of Contractor, when a subcontractor is not required to provide certified cost or pricing data (see 15.209(b)), unless using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(8) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see subpart 5.2).

(9) 41 U.S.C. 418a, Rights in Technical Data (see subpart 27.4).

(10) 41 U.S.C. 701, *et seq.*, Drug-Free Workplace Act of 1988 (see subpart 23.5).

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(11) 46 U.S.C. Appx 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see Subpart 47.5) (except for the types of subcontracts listed at 47.504(d)).

(12) 49 U.S.C. 40118, Fly American provisions (see subpart 47.4).

(13) Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, Payment Protections for Subcontractors and Suppliers (see 28.106-6).

(b) The requirements for a certificate and clause under the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701, *et seq.*, (see Subpart 22.3) are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components.

(c) The applicability of the following laws have been modified in regards to subcontracts at any tier for the acquisition of commercial items or commercial components:

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see subpart 3.5).

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see subpart 15.4).

(3) 41 U.S.C. 422, Cost Accounting Standards (48 CFR chapter 99) (see 12.214).

[60 FR 48241, Sept. 18, 1996 as amended at 61 FR 67418, Dec. 20, 1996; 62 FR 232, 236, Jan. 2, 1997; 62 FR 51270, Sept. 30, 1997; 64 FR 72416, 72418, Dec. 27, 1999; 65 FR 46069, July 26, 2000; 68 FR 13203, Mar. 18, 2003; 70 FR 57454, Sept. 30, 2005; 72 FR 46330, Aug. 17, 2007; 73 FR 54008, Sept. 17, 2008; 74 FR 14648, Mar. 31, 2009; 75 FR 53142, Aug. 30, 2010]

### **12.505 Applicability of certain laws to contracts for the acquisition of COTS items.**

COTS items are a subset of commercial items. Therefore, any laws listed in sections 12.503 and 12.504 are also inapplicable or modified in their applicability to contracts or subcontracts for the acquisition of COTS items. In addition, the following laws are not applicable to contracts for the acquisition of COTS items:

(a)(1) 41 U.S.C. 10a, portion of first sentence that reads “substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States,”